

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BARBARA SANDERSON-CRUZ,</b>	<b>:</b>	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>UNITED STATES OF AMERICA</b>	<b>:</b>	
<b>Defendant.</b>	<b>:</b>	<b>NO. 98-5709</b>

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND VERDICT**

**Reed, S.J.**

**May 15, 2000**

**INTRODUCTION AND AGREED FACTS**

This is an action pursuant to the Federal Tort Claims Act and arises from a collision between car driven by the plaintiff Barbara Sanderson-Cruz and a United States Postal truck.

The following are the facts as stipulated by the parties:

1. On Wednesday, November 26, 1997, at or about 3:45 P.M., Sanderson-Cruz drove her car, a 1994 Ford Thunderbird, into the parking lot of the Logan Station Post Office located a Broad and Stetson Avenue, Philadelphia, Pennsylvania, in order to pick up her husband, a postal employee working a the Logan Station facility.
2. Sanderson-Cruz stopped her vehicle behind a postal truck operated by postal employee John McGettigan.
3. Another postal service truck, driven by postal employee Rob Nurse then pulled into the lot behind the vehicle Sanderson-Cruz was driving.
4. McGettigan backed the postal truck he was driving into the car Sanderson-Cruz was driving.

5. MeGettigan was aware that vehicles driven by non-postal employees or spouses of postal employees sometimes drove into the parking lot where the accident took place.
6. MeGettigan did not look behind him before backing up the truck he was driving.
7. MeGettigan did not check his rear view mirror before backing up.
8. Even if MeGettigan had tried to check the mirrors, the mirrors on the truck MeGettigan was driving were out of alignment at the time of the accident .
9. Following the accident, MeGettigan's supervisor cited him for failing to check his mirrors properly before backing up.
10. MeGettigan's supervisor also cited him for failing to use a spotter before backing up.
11. The day after the accident, November 27, 1997, was Thanksgiving.
12. Sanderson-Cruz treated with her family physician, Dr. Anthony Rodriguez, on November 28, 1997.
13. Sanderson-Cruz was laid off from her position as a recreational therapy assistant with Genesis ElderCare prior to the accident.
14. On or about July 24, 1998, Dr. Rodriguez signed a certification that Sanderson-Cruz was able to return to work.
15. Sanderson-Cruz subsequently obtained a new job as a therapeutic programming assistant with St. Joseph's Villa in Flourtown, starting on or about July 27, 1998,

This Court accepts and adopts this stipulation of facts. Thus, the happening of the accident and the basic facts are agreed to and the outstanding questions are the contributory negligence, if any, of the plaintiff driver, Sanderson-Cruz and the extent of her injuries. Having conducted a non-jury civil trial before this Court on May 10, 2000, at which counsel for both

parties participated, and based upon the pleadings, the exhibits, the stipulations and testimony presented at trial, and the arguments of counsel, I make the following findings of fact and conclusions of law:

### **I. FINDINGS OF FACT<sup>1</sup>**

16. McGettigan, who was acting in the course of his duties for the defendant, did not exercise due care while operating the postal vehicle. (Testimony of Sanderson-Cruz; Stipulated Facts).
17. Although the entrance to the parking area was clearly marked with a sign stating “Authorized Vehicles Only,” there is no evidence that the vehicle of a postal worker driven by his spouse for the purpose of picking him up from work was not an authorized vehicle. On the contrary, Sanderson-Cruz has proven by a preponderance of the evidence that she was an authorized business visitor. (Testimony of Sanderson-Cruz).
18. The government has not proven by a preponderance of the evidence that Sanderson-Cruz was comparatively negligent. (Stipulated Facts; Testimony of Sanderson-Cruz).
19. The postal truck driven by McGettigan struck a glancing blow to the right front bumper of the car driven by Sanderson-Cruz, causing some superficial, visible damage to the bumper. (Govt. Exh. 9; Plt. Exhs. 5, 14, 15, 16).
20. Sanderson-Cruz has a history of low back, neck and shoulder pain which occasioned approximately twenty doctor visits in the twelve months preceding the accident. The treatment was not successful in alleviating her pain and disability. (Testimony of

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<sup>1</sup> To the extent that these findings of fact include conclusions of law or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this Court.

- Sanderson-Cruz; Govt. Exhs. 11, 12, 14, 15, 16, 17, 18, 19).
21. In February of 1997, Sanderson-Cruz was diagnosed with degenerative disc disease. A magnetic resonance image (“MRI”) revealed a herniated disc in her lower back. (Govt. Exh. 14).
  22. Sanderson-Cruz left work as a recreational therapist assistant in March of 1997, because her low back and neck condition caused her to be disabled from her duties. (Testimony of Sanderson-Cruz; Testimony of Robert Cipko).
  23. Throughout the summer and fall of 1997, Sanderson-Cruz continued to visit her doctor complaining of pain. Her doctor prescribed Lodine, Flexiril and Vicodan to help ease her pain. (Govt. Exh. 17).
  24. Sanderson-Cruz has failed to prove by a preponderance of the evidence that her lower back, shoulder and neck injuries or condition had almost completely resolved themselves by the time of the accident. (Testimony of Sanderson-Cruz; Govt. Exhs. 15, 17, 18, 19).
  25. Sanderson-Cruz has failed to prove by a preponderance of the evidence that she suffered a herniated lumbar disc or an aggravation of the preexisting herniated lumbar disc because of the accident on November 26, 1997. (Testimony of Sanderson-Cruz; Testimony of Dr. Mandel; Govt. Exhs. 15, 17, 18, 19, 21).
  26. However, Sanderson-Cruz did prove by a preponderance of the evidence that she suffered a soft tissue injury as a result of the accident, causing her increased pain in her right shoulder, neck and low back. (Testimony of Sanderson-Cruz; Govt. Exh. 21).
  27. On February 19, 1998, Sanderson-Cruz sought treatment from Dr. Rodriguez and the office record shows no complaint about her neck, shoulder or low back during that visit.

(Govt. Exh. 21).

28. Sanderson-Cruz has failed to prove by a preponderance of the evidence that the soft tissue injury to her neck, shoulder and low back and related disability, insofar as such is attributable to the accident, continued beyond February 18, 1998. (Testimony of Sanderson-Cruz; Testimony of Dr. Mandel; Govt. Exh. 21).
29. Sanderson-Cruz has proved by a preponderance of the evidence that only her visits to and examinations by Dr. Rodriguez on November 28, 1997, December 15, 1997, and February 11, 1998, for a total cost of \$155.00, were made necessary by and causally related to the accident of November 26, 1997. (Id.; Plt Exh. 1).
30. Sanderson-Cruz has failed to prove by a preponderance of the evidence that her visits to and examinations by Dr. Rodriguez after February 18, 1998, were made necessary by or causally related to the accident of November 26, 1997. (Testimony of Dr. Mandel; Govt. Exh. 21).
31. Sanderson-Cruz has proved by a preponderance of the evidence that she had an ownership interest in the vehicle she was operating at the time of the accident by reason of dominion, control and sharing of expenses. (Testimony of Sanderson-Cruz).
32. The accident resulted in damage to the car of Sanderson-Cruz of the type and location consistent with the stipulated facts and evidence describing the collision and valued at \$505.62. (Testimony of Sanderson-Cruz; Plt. Exh. 5, 14, 15, 16).
33. Sanderson-Cruz and her husband elected the limited tort option on the insurance policy that covered the car at the time of the accident. (Govt. Exh. 4).
34. Sanderson-Cruz has failed to prove by a preponderance of the evidence that she sustained

a serious injury as a result of the accident within the meaning of the Pennsylvania Motor Vehicle Financial Responsibility Law.<sup>2</sup> 75 P.S. § 1701 et seq. (West 1996). (Testimony of Sanderson-Cruz; Testimony of Dr. Mandel; Govt. Exhs. 15, 17, 18, 21).

35. The soft tissue injury suffered by Sanderson-Cruz in the accident did, however, contribute to her inability to return to work at a job for which she was qualified and was reasonably expected to obtain by December 1, 1997. (Testimony of Sanderson-Cruz; Testimony of Dr. Rodriguez; Testimony of Dr. Mandel; Govt. Exh. 21).
36. Sanderson-Cruz has proved by a preponderance of the evidence that she has suffered a loss in earnings due to soft tissue injuries caused by the accident between December 1, 1997, and February 18, 1998, in the amount of \$4,825.60.<sup>3</sup> (Testimony of Robert Cipko; Testimony of Sanderson-Cruz; Govt. Exhs. 15, 17, 21).
37. Sanderson-Cruz has failed to prove by a preponderance of the evidence that she has suffered any loss in earnings or earning power due to the accident after February 18, 1998. (Testimony of Sanderson-Cruz; Testimony of Dr. Mandel; Govt. Exh. 21).

## **II. CONCLUSIONS OF LAW<sup>4</sup>**

38. This action arises under the Federal Tort Claims Act, 28 U.S.C. § 2674-2680.

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<sup>2</sup>In so finding, I have considered the extent of the injury caused by the collision, the length of time it took for the injury to resolve itself, the treatment required, as well as facts surrounding the happening of the accident and force of the collision. Washington v. Baxter, 719 A.2d 733, 740 (Pa. 1998).

<sup>3</sup>This figure is calculated as Sanderson-Cruz earning \$10.40 an hour for the 58 work days between and including December 1, 1997, and February 18, 1998.

<sup>4</sup> To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this Court.

39. I conclude that Sanderson-Cruz was not a trespasser on the grounds of the postal facility where the accident took place and that McGettigan owed Sanderson-Cruz a duty to operate his postal truck with reasonable care for the safety of Sanderson-Cruz.
40. I conclude that McGettigan's negligence in the operation of the postal vehicle was the proximate cause of the accident.
41. I conclude that Sanderson-Cruz is entitled to damages from defendant for her economic losses.
42. I conclude that because she failed to prove that she suffered a serious injury, Sanderson-Cruz is barred from recovering non-economic losses by operation of the Pennsylvania Motor Vehicle Financial Responsibility Law. See 75 P.S. §§ 1704(a)(i)(A); Washington, 719 A.2d at 740.

### III. VERDICT

Having concluded that the plaintiff Barbara Sanderson-Cruz may not recover for non-economic loss and based upon the foregoing findings and conclusions, my verdict is in favor of Sanderson-Cruz in the amount of \$5,468.22.<sup>5</sup>

An appropriate judgment follows.

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<sup>5</sup>The sum is calculated as follows:

Lost wages	\$4,825.60
Damage to vehicle	\$ 505.62
Medical Expenses	<u>\$ 155.00</u>
TOTAL	\$5,486.22

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<b>Plaintiff,</b>	<b>:</b>	
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<b>UNITED STATES OF AMERICA</b>	<b>:</b>	
<b>Defendant.</b>	<b>:</b>	<b>NO. 98-5709</b>

**JUDGMENT**

**AND NOW** this 15th day of May, 2000, **JUDGMENT IS HEREBY ENTERED** on the verdict in favor of plaintiff Barbara Sanderson-Cruz and against the United States of America in the amount of \$5,468.22.

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**LOWELL A. REED, JR., S.J.**